IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1454 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAYA NAGARPALIKA

Versus

SHREE JALLARAM PLASTIC INDUSTRIES

Appearance:

MR AR THACKER for the Petitioner.

MR MURALI N DEVNANI for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/03/2004

ORAL JUDGEMENT

The petitioner is the original defendant of Regular Civil Suit No.308 of 1996, which is pending in the Court of Civil Judge (Senior Division), Porbandar. The said suit is filed by the respondent before the said Court, on the ground that the plaintiff is not liable to pay any octroi amount. In that suit, the petitioner gave an application at Exhibit 5. The trial court granted that application partially. The plaintiff was directed to deposit Rs.63,750/-, i.e. 50% of the principal amount of Rs.1,27,500/-. The defendant was permitted to

withdraw the said amount on furnishing undertaking to the effect that in case the suit is decreed, the defendant shall deposit the said amount in the Court immediately. The trial court also passed an order that the suit be expedited.

Against that order, appeal was preferred by the present opponent. That appeal was allowed by the District Court, against which the original defendant Nagarpalika has preferred this Civil Revision Application.

During the pendency of the CRA, the order of the appellate court is stayed and by virtue of the same, the order passed by the trial court below Exhibit 5 was revived, by virtue of the interim order of this Court.

Mr.Thakkar, learned Advocate appearing for the petitioner, submitted that the suit is of 1996, and even as per the order of the Court, the suit is required to be decided expeditiously. He submitted that the revision may not be maintainable in view of the amendment in Section 115 of the Code of Civil Procedure and in the interest of justice, appropriate order may be passed for expeditious hearing of the suit.

Mr.V.G. Dave, learned Advocate, who is appearing for Mr.M.N. Devnani, submitted that since the defendant has withdrawn the amount, in case the suit is decreed, the defendant may be directed to refund the said amount. He submitted that he has no objection if the order is passed for expeditious hearing of the suit.

In the facts and circumstances of the case, this CRA is rejected as not maintainable. Rule is discharged. Interim relief stands vacated subject to what is stated in this order. No costs.

It is clarified that whatever amount the petitioner has withdrawn by virtue of the order of the trial court, shall be subject to the result of the final order in the suit and the order of the trial court shall prevail till the suit is disposed of by the trial court. It is argued by Mr.Dave that, at present, octroi is not payable in view of the abolition of octroi. In that view of the matter, order regarding payment of octroi amount regularly may not have any effect in case such octroi is abolished by virtue of Government Notification. In the facts and circumstances of the case, the suit, being Regular Civil Suit No.308 of 1996, pending before the Court of Civil Judge (Senior Division), Porbandar, is

directed to be decided at the earliest, in any case, latest by 31st March, 2005.

Writ to be sent to the trial court forthwith for deciding the suit at the earliest.

19th March, 2004 (P.B. Majmudar, J.)

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(apj)